

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

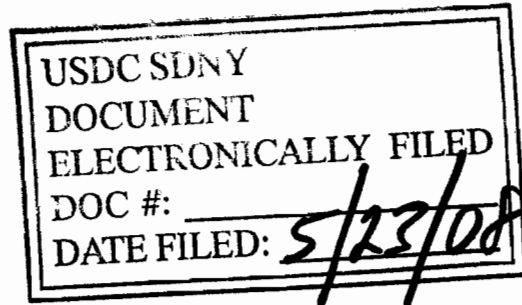
LABORATOIRES CARILÈNE S.A.S.,

Plaintiff/Counterclaim Defendant,

-against-

AURIGA LABORATORIES, INC.,

Defendant/Counterclaim Plaintiff.



07 Civ. 9616 (GEL)

ORDER

GERARD E. LYNCH, District Judge:

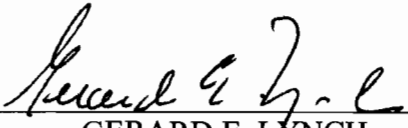
Plaintiff seeks an order compelling defendant to produce seven documents withheld on grounds of attorney-client privilege. The Court, having examined the disputed documents *in camera*, grants plaintiff's request in part.

Documents 25, 41, 56, 65, and 66 are not privileged, and defendant is hereby ordered to produce them to plaintiff. The mere fact that the author, recipient, or subject of the communications, Phil Pesin, is a member of the California bar is insufficient to establish a privilege. Pesin is also the former President, CEO, and major shareholder of defendant. Communications are privileged to the extent that they seek or embody legal advice. Nothing in the communications at issue in these documents gives any indication that legal advice was sought or received, or that legal expertise was solicited or brought to bear in any way. The relatively brief communications all seem to involve purely business judgments and issues. The claim of privilege with regard to these documents is thus overruled.

Documents 60 and 63 are mark-ups of draft contracts, of the sort that lawyers would typically be involved in. Moreover, some of the annotations reflecting proposed changes provide specifically legal rationales. While it is not clear from the face of the documents who prepared them, the materials on their face include legal advice. Accordingly, as to these two documents, the claim of privilege is sustained and the plaintiff's request is denied.

SO ORDERED.

Dated: New York, New York
May 23, 2008


GERARD E. LYNCH
United States District Judge